

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

DODSON LUGENE BALLARD	§	
v.	§	CIVIL ACTION NO. 6:10cv174 (Consolidated with 6:10cv236)
DIRECTOR, TDCJ-CID	§	

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Petitioner Dodson Ballard, proceeding *pro se*, filed this application for the writ of habeas corpus under 28 U.S.C. §2254 complaining of the legality of his conviction. This Court ordered that the matter be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Ballard complained of a 1999 conviction, which became final on October 25, 2000, when the Texas Court of Criminal Appeals denied his petition for discretionary review. He sought state habeas corpus relief, which was denied by the Texas Court of Criminal Appeals on January 2, 2002. Two subsequent state habeas petitions were dismissed as successive, and Ballard signed his federal habeas petition on April 20, 2010.

The Respondent has been ordered to answer and has filed a motion to dismiss based upon the expiration of the statute of limitations. Ballard filed a response to the motion to dismiss, and has also filed a “motion to set aside sentence” and a “motion to vacate judgment” following the Respondent’s motion to dismiss, but none of these pleadings address the issue if the statute of limitations.

After review of the pleadings, the Magistrate Judge issued a Report recommending that the motion to dismiss be granted and that the petition be dismissed with prejudice based upon the expiration of the statute of limitations. Ballard had filed objections to this Report; however, these objections appear to focus on the merits of his claims, and make no mention of the statute of limitations. Ballard's objections are without merit.

The Court has conducted a careful *de novo* review of the pleadings in this cause, including the Report of the Magistrate Judge and the Petitioner's objections thereto. Upon such *de novo* review, the Court has concluded that the Magistrate Judge's Report is correct and that the Petitioner's objections are without merit. It is accordingly


ORDERED that the Petitioner's objections are overruled and the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled application for the writ of habeas corpus be and hereby is DISMISSED with prejudice. It is further

ORDERED that the Petitioner Dodson Ballard is hereby DENIED a certificate of appealability *sua sponte*. Finally, it is

ORDERED that any and all motions which may be pending in this civil action are hereby DENIED.

SIGNED this 29th day of October, 2010.


MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE